

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

ALLURE HOME CREATION CO., INC.,

Plaintiff,

v.

ZAK DESIGNS, INC.

Defendant.

:
: Hon. Faith S. Hochberg
:
: Civil No. 03-193 (FSH)
:
: **ORDER**
:
: Date: March 21, 2006
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HOCHBERG, District Judge:

This matter having come before the Court upon Plaintiff's Motion to Dismiss the Complaint and Defendant's Declaratory Judgment Counterclaims pursuant to Fed. R. Civ. P. 12(b)(1); and Plaintiff having filed a Covenant Not to Sue; and Defendant having communicated to the Court by way of letter dated March 8, 2006 that Defendant agrees that the Complaint should be dismissed with prejudice; and Defendant arguing, however, that (a) the dismissal of the Counterclaims should be without prejudice and that (b) Defendant is entitled to attorneys' fees and costs pursuant to 35 U.S.C. § 285;

IT IS on this 21st day of March 2006,

ORDERED that the Complaint is **DISMISSED** with prejudice; the parties shall submit a joint proposed order of dismissal no later than **March 31, 2006**; and it is further

ORDERED that each side shall submit a brief not to exceed 5 pages double-spaced addressing the issue of whether Defendant's Counterclaims shall be dismissed with or without

prejudice, no later than **March 31, 2006**; and it is further

ORDERED that with respect to Defendant's request for attorneys' fees pursuant to 35 U.S.C. § 285, each side shall submit a brief not to exceed 10 pages double-spaced, no later than **March 31, 2006**; all factual bases proffered by the parties shall be stated in the 10-page submission; the Court will not consider any lengthy attachment or appendix to such submissions; such submission shall not be a factual submission tantamount to a trial submission or a summary judgment motion submission, but shall constitute Defendant's only statement of their request for attorneys' fees under 35 U.S.C. § 285.

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.